

EDDIE RENCHER, JR.,) 2:11-cv-01040-RCJ-GWF
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 Plaintiffs,)
)
 vs.) **ORDER**
)
 STATE OF NEVADA, et al.,)
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 Defendants.)
)

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or

1 discharged, or a prior judgment upon which it is based has been reversed
2 or otherwise vacated, or it is no longer equitable that the judgment should
3 have prospective application; or (6) any other reason justifying relief
4 from the operation of the judgment.

5 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
6 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
7 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
8 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
9 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
10 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later
11 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should
12 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
13 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."
14 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,
15 1255 (9th Cir. 1999).

16 In its Order dated November 4, 2011, the court dismissed defendants Scott Graham and
17 MBI, Inc., on the basis that plaintiff did not set forth more than bare, conclusory allegations that these
18 defendants—who according to the complaint are not state actors—conspired with prison personnel to
19 deprive plaintiff of his civil rights (ECF #21). Plaintiff has failed to make an adequate showing under
20 either Rule 60(b) or 59(e) that the portion of this court's Order dismissing these defendants should be
21 reversed.

22 **IT IS THEREFORE ORDERED** that plaintiff's motion for relief from Order under
23 Federal Rule of Civil Procedure 60(b) (ECF #23) is **DENIED**.

24 Dated this 7th day of December, 2011.

25 
26 UNITED STATES DISTRICT JUDGE
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